

Section 1: Who Must File

A return/report must be filed every year for every pension benefit plan, welfare benefit plan, and fringe benefit plan (as specified below), and for every entity that files as a Direct Filing Entity. (Code sections 6058, 6039D, and ERISA sections 104 and 4065).

Pension Benefit Plan

All pension benefit plans covered by ERISA are required to file a Form 5500 except as provided in this **Who Must File** section. The return/report is due whether or not the plan is qualified and even if benefits no longer accrue, contributions were not made this plan year, or contributions are no longer made. Pension benefit plans required to file include both defined benefit plans and defined contribution plans.

The following are among the pension benefit plans for which a return/report must be filed:

1. Profit-sharing, stock bonus, money purchase, 401(k) plans, etc.
2. Annuity arrangements under Code section 403(b)(1).
3. Custodial accounts established under Code section 403(b)(7) for regulated investment company stock.
4. Individual retirement accounts (IRAs) established by an employer under Code section 408(c).
5. Pension benefit plans maintained outside the United States primarily for nonresident aliens if the employer who maintains the plan is:
 - a domestic employer, or
 - a foreign employer with income derived from sources within the United States (including foreign subsidiaries of domestic employers) if contributions to the plan are deducted on its U.S. income tax return. For this type of plan, enter 3A on Form 5500, Part II, line 8a.
6. Church pension plans electing coverage under Code section 410(d).
7. Pension benefit plans that cover residents of Puerto Rico, the U.S. Virgin Islands, Guam, Wake Island, or American Samoa. This includes a plan that elects to have the provisions of section 1022(i)(2) of ERISA apply.
8. Plans that satisfy the Actual Deferral Percentage requirements of Code section 401(k)(3)(A)(ii) by adopting the "SIMPLE" provisions of section 401(k)(11).

See **What To File** on page 7 for more information about what must be completed for pension plans.

Special Rules for Certain Plans of Partnerships and Wholly Owned Trades or Businesses

A plan that provides deferred compensation solely for (1) an individual or an individual and his or her spouse who wholly own a trade or business, whether incorporated or unincorporated; or (2) partners or the partners and the partners' spouses in a partnership may generally file **Form 5500-EZ**, Annual Return of One-Participant (Owners and Their Spouses) Retirement Plan, rather than a Form 5500, provided that the plan:

1. Satisfies the minimum coverage requirements of Code section 410(b) without being combined with any other plan maintained by the employer;
2. Does not cover a business that is a member of a "controlled group"; and
3. Does not cover a business for which leased employees (as defined in Code section 414(n)(2)) perform services.

A plan that fails to meet any of the above conditions must file Form 5500 rather than Form 5500-EZ. A plan that meets all of the above conditions is exempt from filing the Form 5500-EZ if the plan (and any other plans of the employer) had total assets of \$100,000 or less at the end of every plan year beginning on or after January 1, 1994.

For this purpose, a "controlled group" is a controlled group of corporations under Code section 414(b), a group of trades or businesses under common control under Code section 414(c), or an affiliated service group under Code section 414(m) that includes the business of the owner or partner covered by the plan.



When filing Form 5500 for a plan described in *Special Rules for Certain Plans of Partnerships and Wholly Owned Trades or Businesses*, enter code 3G on Part II, line 8a.

Do Not File A Form 5500 For A Pension Benefit Plan That Is Any Of The Following:

1. An unfunded excess benefit plan. See ERISA section 4(b)(5).
2. An annuity or custodial account arrangement under Code section 403(b)(1) or (7) not established or maintained by an employer as described in DOL Regulation 29 CFR 2510.3-2(f).
3. A Savings Incentive Match Plan for Employees of Small Employers (SIMPLE) that involves SIMPLE IRAs under Code section 408(p).
4. A simplified employee pension (SEP) or a salary reduction SEP described in Code section 408(k) that conforms to the alternative method of compliance in 29 CFR 2520.104-48 or 2520.104-49.
5. A church plan not electing coverage under Code section 410(d).
6. A pension plan that is a qualified foreign plan within the meaning of Code section 404A(e) that does not qualify for the treatment provided in Code section 402(e)(5).
7. An unfunded pension plan for a select group of management or highly compensated employees that meets the requirements of 29 CFR 2520.104-23, including timely filing of a registration statement with the DOL.
8. An unfunded dues financed pension benefit plan that meets the alternative method of compliance provided by 29 CFR 2520.104-27.
9. An individual retirement account or annuity not considered a pension plan under 29 CFR 2510.3-2(d).
10. A governmental plan.

Welfare Benefit Plan

All welfare benefit plans covered by ERISA are required to file a Form 5500 except as provided in this **Who Must File** section. Welfare benefit plans provide benefits such as medical, dental, life insurance, apprenticeship and training, scholarship funds, severance pay, disability, etc.

See **What To File** on page 7 for more information.

Reminder: The administrator of an employee welfare benefit plan that provides benefits wholly or partially through a Multiple Employer Welfare Arrangement (MEWA) as defined in ERISA section 3(40) must file a Form 5500, unless otherwise exempt.

Do Not File A Form 5500 For A Welfare Benefit Plan That Is Any Of The Following:



The exemptions below do not apply to fringe benefit plans. A Form 5500 for a fringe benefit plan must be filed under Code section 6039D even if it is associated with a welfare benefit plan that is exempt from filing under one of the categories below.

1. A welfare benefit plan that covered fewer than 100 participants as of the beginning of the plan year and is unfunded, fully insured, or a combination of insured and unfunded.

a. An unfunded welfare benefit plan has its benefits paid as needed directly from the general assets of the employer or employee organization that sponsors the plan.

Note. Plans that are NOT unfunded include those plans that received employee (or former employee) contributions during the plan year and/or used a trust or separately maintained fund (including a Code section 501(c)(9) trust) to hold plan assets or act as a conduit for the transfer of plan assets during the year.

However, a welfare plan with employee contributions that is associated with a fringe benefit plan under Code section 125 may be treated for annual reporting purposes as an unfunded welfare plan if it meets the requirements of DOL Technical Release 92-01, 57 Fed. Reg. 23272 (June 2, 1992) and 58 Fed. Reg. 45359 (August 27, 1993).

b. A fully insured welfare benefit plan has its benefits provided exclusively through insurance contracts or policies, the premiums of which must be paid directly to the insurance carrier by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members (which the employer or employee organization forwards within 3 months of receipt). The insurance contracts or policies discussed above must be issued by an insurance company or similar organization (such as Blue Cross, Blue Shield or a health maintenance organization) that is qualified to do business in any state.

c. A combination unfunded/insured welfare plan has its benefits provided partially as an unfunded plan and partially as a fully insured plan. An example of such a plan is a welfare benefit plan that provides medical benefits as in **a** above and life insurance benefits as in **b** above.

See 29 CFR 2520.104-20.

Note. A "voluntary employees' beneficiary association," as used in Code section 501(c)(9) ("VEBA"), should not be confused with the employer or employee organization that sponsors the plan. See ERISA section 3(4).

2. A welfare benefit plan maintained outside the United States primarily for persons substantially all of whom are nonresident aliens.

3. A governmental plan.

4. An unfunded or insured welfare plan for a select group of management or highly compensated employees which meets the requirements of 29 CFR 2520.104-24.

5. An employee benefit plan maintained only to comply with workers' compensation, unemployment compensation, or disability insurance laws.

6. A welfare benefit plan that participates in a group insurance arrangement that files a Form 5500 on behalf of the welfare benefit plan as specified in 29 CFR 2520.103-2. See 29 CFR 2520.104-43.

7. An apprenticeship or training plan meeting all of the conditions specified in 29 CFR 2520.104-22.

8. An unfunded dues financed welfare benefit plan exempted by 29 CFR 2520.104-26.

9. A church plan under ERISA section 3(33).

10. A welfare benefit plan solely for **(1)** an individual or an individual and his or her spouse, who wholly owns a trade or business, whether incorporated or unincorporated, or **(2)** partners or the partners and the partners' spouses in a partnership. See 29 CFR 2510.3-3(b).

Fringe Benefit Plan

Cafeteria plans described in Code section 125, educational assistance programs described in Code section 127, and adoption assistance programs described in Code section 137 are considered fringe benefit plans and are required to file the annual information specified by Code section 6039D. However, Code section 127 educational assistance programs that provide only job-related training that is deductible as an ordinary and necessary business expense, under Code section 162, do not need to file Form 5500.

Note. Fringe benefit plans are often associated with one or more welfare plans. A single Form 5500 may be filed for the fringe benefit plan and an associated welfare plan if all the required information is completed for both plans.

See **What To File** on page 7 for more information about what must be completed for fringe benefit plans.

Direct Filing Entity (DFE)

Some plans participate in certain trusts, accounts, and other investment arrangements that file the Form 5500 as a DFE in

accordance with the **Direct Filing Entity (DFE) Filing**

Requirements on page 9. A Form 5500 **must** be filed for a master trust investment account (MTIA). A Form 5500 is not required but may be filed for a common/collective trust (CCT), pooled separate account (PSA), 103-12 investment entity (103-12 IE), or group insurance arrangement (GIA). However, plans that participate in CCTs, PSAs, 103-12 IEs, or GIAs that file as DFEs generally are eligible for certain annual reporting relief. For reporting purposes, a CCT, PSA, 103-12 IE, or GIA is **not** considered a DFE unless a Form 5500 and all required attachments are filed for it in accordance with the **Direct Filing Entity (DFE) Filing Requirements**.

Note. Special requirements also apply to Schedules D and H attached to the Form 5500 filed by plans participating in MTIAs, CCTs, PSAs, and 103-12 IEs. See the instructions for these schedules.

Section 2: When To File

Plans and GIAs. File 2001 return/reports for plan and GIA years that began in 2001. All required forms, schedules and attachments must be filed by the last day of the 7th calendar month after the end of the plan or GIA year (not to exceed 12 months in length) that began in 2001. If the plan or GIA year differs from the 2001 calendar year, fill in the fiscal year beginning and ending dates on the line provided at the top of the form.

DFEs other than GIAs. File 2001 return/reports no later than 9½ months after the end of the DFE year that ended in 2001. A Form 5500 filed for a DFE must report information for the DFE year (not to exceed 12 months in length). If the DFE year differs from the 2001 calendar year, fill in the fiscal year beginning and ending dates on the line provided at the top of the form.

Short Years. For a plan year of less than 12 months (short plan year), file the form and applicable schedules by the last day of the 7th month after the short plan year ends. Fill in the short plan year beginning and ending dates on the line provided at the top of the form and check box B(4) in Part I. For purposes of this return/report, the short plan year ends on the date of the change in accounting period or upon the complete distribution of assets of the plan. Also see the instructions for **Final Return/Report** on page 6 to determine if box B(3) should be checked.

Notes. **(1)** If the filing due date falls on a Saturday, Sunday, or Federal holiday, the return/report may be filed on the next day that is not a Saturday, Sunday, or Federal holiday. **(2)** If the 2001 Form 5500 is not available before the plan or DFE filing due date, use the 2000 Form 5500 and enter the 2001 fiscal year beginning and ending dates on the line provided at the top of the form.

Extension of Time To File

Using Form 5558

A plan or GIA may obtain a one-time extension of time to file Form 5500 (up to 2½ months) by filing **Form 5558**, Application for Extension of Time To File Certain Employee Plan Returns, on or **before** the normal due date (not including any extensions) of the return/report. **You MUST file Form 5558 with the IRS.**

Approved copies of the Form 5558 will not be returned to the filer. However, a photocopy of the extension request that was filed must be attached to the Form 5500.

File Form 5558 with the Internal Revenue Service Center, Ogden, UT 84201-0027.

Using Extension of Time To File Federal Income Tax Return

An automatic extension of time to file Form 5500 until the due date of the Federal income tax return of the employer will be granted if all of the following conditions are met: **(1)** the plan year and the employer's tax year are the same; **(2)** the employer has been granted an extension of time to file its Federal income tax return to a date later than the normal due date for filing the Form 5500 (except IRS **Form 8736**, Application for Automatic Extension of Time To File U.S. Return for a Partnership, REMIC,

or for Certain Trusts); and **(3)** a copy of the application for extension of time to file the Federal income tax return is attached to the Form 5500. An extension granted by using this automatic extension procedure CANNOT be extended further by filing a Form 5558.

Note. An extension of time to file the Form 5500 described above does not operate as an extension of time to file a Form 5500 filed for a DFE (other than a GIA) or the PBGC Form 1.

Other Extensions of Time

Additional special extensions of time may be provided under certain circumstances, such as extensions for Presidentially-declared disasters or for service in, or in support of, the Armed Forces of the United States in a combat zone. If you are using one of these special extensions, check Form 5500, Part I, box D and attach a statement citing the authority for the extension. The attachment must be appropriately labeled at the top of the statement, for example, "**Form 5500, Box D - DISASTER RELIEF EXTENSION**" or "**Form 5500, Box D - COMBAT ZONE EXTENSION**." See www.irs.gov and www.efast.dol.gov for announcements regarding such special extensions.

Delinquent Filer Voluntary Compliance (DFVC) Program

The DFVC Program facilitates voluntary compliance by plan administrators who are delinquent in filing annual reports under Title I of ERISA by permitting administrators to pay reduced civil penalties for voluntarily complying with their DOL annual reporting obligations. If the Form 5500 is being filed under the DFVC Program, check Form 5500, Part I, box D and attach a statement explaining that the Form 5500 is being filed under the DFVC Program with "**Form 5500, Box D - DFVC FILING**" prominently displayed at the top of the statement.

See www.efast.dol.gov for information concerning the submission of penalty payments to the DFVC Program processing center in Atlanta, GA. Penalty payments should **not** be submitted to EFAST.

Private Delivery Service

You can use certain private delivery services designated by the IRS to meet the "timely mailing as timely filing/paying" rule for tax returns and payments. The most recent list of designated private delivery services was published by the IRS in October 2001 and includes only the following:

- Airborne Express (Airborne): Overnight Air Express Service, Next Afternoon Service, Second Day Service.
- DHL Worldwide Express (DHL): DHL "Same Day" Service, DHL USA Overnight.
- Federal Express (FedEx): FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day.
- United Parcel Service (UPS): UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.

The private delivery service can tell you how to get written proof of the mailing date.

See **Where To File** below for the street address when using a private delivery service.

Section 3: Where To File

File the Form 5500, with any required schedules, statements, and attachments, at the address indicated below.

By mail:

Address for filing on paper

PWBA
P.O. Box 7043
Lawrence, KS 66044-7043

Address for filing on floppy disc, CD-ROM, or tape

PWBA
P.O. Box 7041
Lawrence, KS 66044-7041

By private delivery service:

Address for filing on paper, floppy disc, CD-ROM, or tape

PWBA / NCS
Attn: EFAST
3833 Greenway Drive
Lawrence, KS 66046-1290

Section 4: How To File

The return/report must be completed in accordance with the **Line-by-Line Instructions for the 2001 Form 5500 and Schedules** on page 14.

Answer all questions with respect to the plan or DFE year, unless otherwise explicitly stated in the instructions or on the form itself. Therefore, responses usually apply to the year entered or printed at the top of the first page of the form.

Do not enter "N/A" and "Not Applicable" on the Form 5500 or schedules unless specifically permitted by the form, schedules, or instructions. "Yes" or "No" questions on the forms and schedules must be marked either "Yes" or "No," but not both.

Filers make several common mistakes. To reduce the possibility of correspondence and penalties:

- Sign and date the Form 5500, and make sure that any schedules or attachments that require a signature are properly signed and dated.
- Check your math to avoid calculation errors.
- All lines on the Form 5500 must be completed unless otherwise specified. All applicable schedules and attachments must also be completed.
- All schedules and attachments to the Form 5500 must be properly identified, and must include the name of the plan or DFE, EIN, and plan number (PN) as found on the Form 5500, lines 1a, 2b, and 1b, respectively. At the top of each attachment, indicate the schedule and line, if any (e.g., *Schedule H, Line 4i*) to which the attachment relates. When assembling the package for filing, you can place attachments to a schedule, either directly behind that schedule or at the end of the filing.
- Attach the required accountant's opinion and report. The instructions in **What To File** on page 7 explain which plans and DFEs are required to attach the opinion and report.
- Check boxes should be filled in completely or clearly marked with an "X." Do not mark on or near the bar code or in the upper right corner of the form as this will interfere with processing.
- Complete **Part I - Annual Report Identification Information** at the top of the Form 5500. Do not mark final return/report in Line B of **Part I - Annual Report Identification Information** if you are reporting participants and/or assets at the end of the plan year.
- Complete Form 5500, lines 8 and 9, if applicable, to report all benefits provided and plan funding/benefit arrangements.

